APPELLATE CIVIL.

Before Mr. Justice Tottenham and Mr. Justice anerjee.

1889 *June* 18.

SURYA KANT ACHARYA BAHADUR (DEFENDANT) *v.* HEMANT KUMARI DEVI (PLAINTIFF). *

Land Registration Act (Bengal Act VII of 1876), *s.* 78—*Suit for rent by unregistered proprietor—Application for registration as proprietor.*

Section 78 of the Land Registration Act 1876 precludes a person claiming as proprietor from suing a tenant for rent until his name has been actually registered as such under the Act. A mere application to be registered is not sufficient for the purpose.

THIS was an appeal against a decree for arrears of rent obtained by the respondent Rani Hemant Kumari Devi, as Zemindar, against the appellant Raja Surya Kant Acharya, as the holder of a tenure in her zemindari.

On the 23rd Bhadro 1294 (13th September 1887) Rani Hemant Kumari brought a suit to recover from Raja Surya Kant Acharya the arrears of rent, and road and other cesses, for the years 1292 and 1293 (1885 and 1886). The plaintiff was the widow of the late Raja Jotindro Narain Roy, and as such claimed the whole of his estate, and to have come into possession upon the death of Rani Sarat Sundari Devi, the mother of the late Raja and the executrix of his will. On the 16th Pous 1294 (30th December 1887), subsequently to the institution of her suit, the plaintiff applied for the registration of her name as proprietor of the estate of her late husband under the Land Registration Act (Bengal Act VII of 1876).

Several objections, more or less technical, were taken to the suit by the defendant, all of which the Subordinate Judge overruled, giving the plaintiff a decree for a portion of her claim. The only objection material to this report was whether the plaintiff could recover rent from the defendant inasmuch as her name had not been registered under the Land Registration Act,

* Appeal from Original Decree No. 62 of 1888, against the decree of Baboo Kali Churn Ghosal, Officiating Subordinate Judge of Mymensingh, dated the 9th of January 1888.

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1876. Regarding this objection the Subordinate Judge observed: 'There is no doubt whatever as to the plaintiff's right to receive rent from the defendant, for the latter has already deposited rent to her credit. Then plaintiff has very recently succeeded to her zemindari, and she has, as will be seen from the copy of the petition (Exhibit III), filed on her behalf, already applied under the Land Registration Act for the registration of her name. I see no valid objection why she should not be allowed to sue for the rents claimed. It is true that her name has not been registered as yet, but it may take a good deal of time to have that effected, and is the plaintiff on that account to allow her claim for rent to be barred. I think not, when the plaintiff's title is not denied. I suppose her application for the registration of her name is quite sufficient to satisfy the requirements of law." Accordingly the Subordinate Judge decided this objection against the defendant. The defendant appealed to the High Court.

Baboo *Jogesh Chunder Roy* for the appellant.

Baboos *Sreenath Das* and *Kishori Lal Sircar* for the respondent.

The judgment of the High Court (TOTTENHAM and BANERJEE, JJ.) was as follows:—

This is an appeal against a decree for arrears of rent obtained by the respondent as zemindar against the appellant as holder of a tenure in her zemindari.

The plaintiff, respondent, claimed the whole of the estate as widow of the late Raja Jotindro Narain Roy, and to have come into possession upon the death of Rani Sarat Sundari Devi, who was the executrix under the will of the late Raja. It is not quite clear upon the pleadings on what date the plaintiff succeeded to possession, but it must have been either at the extreme end of the year 1292 or sometime in 1293.

The Court below over-ruling several objections, more or less technical, taken by the defendant, gave the plaintiff a decree.

The same objections have been urged in the appeal before us; and we are forced to the conclusion, we must say somewhat unwillingly, that as to one of these objections, technical as it is, the appellant is entitled to succeed. That objection is that when this suit was brought and when the decree was passed, the

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plaintiff was not registered under the Bengal Council Act VII of 1876. The lower Court got over this objection by saying that it appeared that, before the suit was decided, the plaintiff had made an application to have her name registered, and that that might, in the Subordinate Judge's opinion, be taken as quite sufficient to satisfy the requirements of the law. The law says in s. 78:—"No person shall be bound to pay rent to any person claiming such rent as proprietor or manager, &c., unless the name of such claimant shall have been registered under this Act." It seems to us quite clear that the lower Court is wrong in supposing that an application to be registered is the same in effect as having been registered; for, if an application to be registered is the same in effect as having been registered, then in respect of every estate, there might be half-a-dozen claimants suing at the same time; and one of the objects of the law is that tenants should not be harassed by suits for rent by landlords who have no title thereto. The words of the law appear to us clearly to require before a person sues for rent, claiming as proprietor, that such person must be registered under the Act; for if a tenant is not bound to pay rent to an unregistered proprietor, he is not liable, we think, to be sued for it.

This observation has been made before in a similar case before this Court. The decision, which has been cited, is *Dhoronidhur Sen* v. *Wajidunnissa Khatoon* (1), decided on the 10th January 1888. If the law tells a tenant that he is not bound to pay any

(1) *Before Sir W. Comer Petheram, Knight, Chief Justice, and Mr. Justice Tottenham.*

DHORONIDHUR SEN AND OTHERS (DEFENDANTS) *v.* WAJIDUNNISSA KHATOON (PLAINTIFF).*

Land Registration Act (Bengal Act VII of 1876), s. 78—Suit for rent by unregistered proprietor.

It is a condition precedent under s. 78 of the Land Registration Act, 1876, that a person must be registered as proprietor or manager before he can bring a suit for arrears of rent.

SUIT for arrears of rent.

The fact of this case are sufficiently set out in the judgment of Tottenham, J.

* Appeal from Original Decree No. 268 of 1886, against the decree of Baboo Parbati Coomar Mitter, Subordinate Judge of Jessore, dated the 25th June 1886.

person who is unregistered, it follows that it was not intended that an unregistered person should be able to sue him, not only to recover the amount of rent, but also the costs and possibly damages for non-payment.

The *Advocate-General* (*Sir Charles Paul*) and Baboo *Golap Chunder Sarkar* for the appellants.

Baboo *Mohesh Chunder Chowdhry* and Baboo *Jogesh Chunder Roy* for the respondent.

The following judgments were delivered by the High Court (PETHERAM, C.J., and TOTTENHAM, J.) :—

TOTTENHAM, J.—This was a suit brought to recover the rent of a patni. It was brought against nine persons, upon the ground that they being a joint family were all joint owners of the patni.

The patni is registered in the plaintiff's books in the name of the defendant No. 1 only, Dhoronidhur Sen, who had purchased it at an auction sale under Regulation VIII of 1819 in the year 1873. The plaintiff alleges herself to be the matwalli of the estate to which this patni belongs. The estate is said to have been created a waqf by one Hafizunnissa, and Hafizunnissa is said to have constituted herself the first matwalli, and afterwards, in the month of Cheit 1291 to have appointed the present plaintiff, Wajidunnissa, matwalli in her stead. Wajidunnissa therefore brought this suit to recover the patni rent for the years from 1289 to 1292.

The objections taken in the defences were, first, that the plaintiff, not being registered as a manager or proprietor under Bengal Act VII of 1876, was not competent to sue for the rent at all. It was also contended that only one of the defendants, Dhoronidhur, was liable to pay the rent, he being the sole patnidar, the other defendants having no concern with it, that is to say, not being liable for the rent by any agreement between themselves and the plaintiff. Another plea was added on the part of Dhoronidhur that, as regards a great portion of the claim, payment had been made.

The lower Courts decided all the points in favour of the plaintiff, except as to the sum of Rs. 100, for which the Court gave credit to the defendants in diminution of the amount of the claim. The defendants have appealed, and the same objections have been repeated in this Court.

It appears to us that the first objection is fatal to the suit, the objection, namely, that the plaintiff, not having been registered under Bengal Act VII of 1876 at the time the suit was filed, was not competent to institute it. It is true that, during the pendency of the suit and before the decree was made, she had got herself registered, but s. 78 of the Act provides that "no person shall be bound to pay rent to any person claiming rent as proprietor or manager of an estate or revenue-free property, in respect of which he is required by this Act to cause his name to be registered, or his mortgagee, unless the

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In the present case, there appears to be really no question that the plaintiff was entitled, as widow of her late husband, to receive the rent payable by the defendant; and probably if the rent claimed had not been at an enhanced rate, the present objection would not have been taken. As it has been taken, we think we are bound by law to give effect to it.

name of such claimant shall have been registered under this Act." It seems to follow from the fact that no person is bound to pay rent to such person that such person is not competent to sue him until registered.

For the respondent, it has been contended by Baboo Mohesh Chunder Chowdhry that this objection, if valid at all, could only apply to the rent accruing due subsequent to the death of the previous matwalli. He contends that, as regards the rents previously due, they were assigned to the present plaintiff under the deed by which she was created matwalli.

This contention appears to us to be fallacious, inasmuch as the rents which accrued due in the lifetime of Hafizunnissa were, upon the plaintiff's own showing, not due to *her*, but to the waqf estate; and the present plaintiff's position is not that of an assignee from Hafizunnissa, but of a manager recovering the debts due to the estate. The section of Bengal Act VII of 1876 appears to me to apply equally to both kinds of arrears, those due before and those accruing due after the incumbency of Hafizunnissa. We think therefore that this suit should have been dismissed on this ground.

In this view, it is not necessary that we should determine the other objection, whether the plaintiff is entitled to sue all the defendants or not, the question being whether they are all proprietors of the patni or only Dhoronidhur. But we may observe that, in the state of the evidence on the present record, we should not be prepared to hold that the plaintiff is entitled to recover a decree from them all. We think that the evidence adduced by the plaintiff does not show that they are all holders of the patni. The presumption of law that because the family was generally joint, the purchase-money for the patni must have come from joint funds, is not we think by itself sufficient to over-ride the facts disclosed by the documents of title under which Dhoronidhur is the registered patnidar, and in the Court below, the issue whether or not the patni was acquired by joint funds was not distinctly raised between the parties.

However that may be, we think that, for the reasons given above, the present suit must be dismissed. The plaintiff being now the registered manager or owner will be at liberty, if he thinks fit, to bring a fresh suit in which all these questions could be fully decided between the parties.

As the lower Court ought not to have tried this suit at all, none of its findings can have binding effect.

PETHERAM, C.J.—With reference to the liability of all the defendants jointly in this case, all that we say is that, as the record at present stands, we do not

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The result is that that portion of the plaintiff's suit, in respect of which this appeal has been preferred, must be dismissed.

The appellant will be entitled to his costs in this Court on the sum at which this appeal is valued, and in the lower Court on the whole amount claimed by the plaintiff.

C. D. P. *Appeal allowed.*

Before Mr. Justice Tottenham and Mr. Justice Banerjee.

G. CHISHOLM (DEFENDANT) *v.* GOPAL CHUNDER SURMA (PLAINTIFF).*

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June 14.

Set-off—Cross-demand arising out of the same transaction—Civil Procedure Code (Act XIV of 1882), s. 111.

When the defence raises a cross-demand which is found to arise out of the same transaction as, and is connected in its nature with, the plaintiff's suit, the defendant is entitled to have an adjudication of it, although it may not amount to a set-off under s. 111 of the Civil Procedure Code.

Bhagbat Panda v. *Bamdeb Panda* (1) relied on ; *Clark* v. *Ruthnavaloo Chetti* (2) referred to.

SUIT for the recovery of arrears of salary.

The defendant, who was the Agent of The Rivers Steam Navigation Company at Behali, on the 28th November 1882,

think there is sufficient evidence to charge them all jointly. Whether it would be or is possible, or whether it is the fact and could be proved by any other evidence, that the whole of this joint family are in possession of the patni is a different matter, but as the record at present stands, we do not think there is sufficient evidence to support the finding of the learned Judge, but we decree this appeal on the ground that the plaintiff cannot sustain this suit by reason of her not having been the registered proprietor at the time when the suit was brought, and by reason of the provisions of s. 78 of Bengal Act VII of 1876. We express no opinion whatever as to any finding of the learned Judge with reference to the joint liability of the defendants except we think that the evidence at present on the record is not sufficient to sustain it. The appeal will be decreed with costs.

C. D. P. *Appeal decreed.*

*Appeal from Appellate Decree No. 1474 of 1888, against the decree of H. Luttman-Johnson, Esq., Judge of the Assam Valley Districts, dated the 8th of May 1888, affirming the decree of Baboo Madhub Chunder Bardolai, Munsiff of Tejpur, dated the 31st January 1887.

(1) I. L. R., 11 Calc., 557. (2) 2 Mad. H. C., 296.

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appointed the plaintiff his mohurir at the Steamer Ghât on a salary of Rs. 40 per mensem. The plaintiff was at first allowed the services of three chowkidars on Rs. 6 per mensem each, but in March 1883 this number was reduced to two by the defendant. In July 1884 the plaintiff tendered his resignation, and on the 1st September following was relieved of his duties. After repeated demands for payment, the plaintiff brought this suit to recover the sum of Rs. 890 which he claimed on account of arrears of his salary and the wages of the chowkidars up to the end of August 1884, after giving credit to the defendant for various sums of money amounting to Rs. 204 paid from time to time.

The defendant contended that on account of goods and property damaged, lost, or not accounted for by the plaintiff, he was entitled to set-off the sum of Rs. 624-6-3 made up of the following items:—

		Rs.	As.	P.
(1)	Tea-lead, damaged through plaintiff's negligence, value	188	0	0
(2)	A boat lost while in charge of the plaintiff, value	50	0	0
(3)	Timber in plaintiff's charge not accounted for, value	138	0	0
(4)	Kayah's stores received from steamer and not delivered or accounted for, value	84	12	0
(5)	Advance paid when plaintiff was serving as Garden Mohurir ...	25	15	0
(6)	Freight on goods landed from steamer realized, but not paid to defendant	7	11	3
(7)	Amount received from the Steam Navigation Company on account of salary	130	0	0
	Total Rs. ...	624	6	3

As regards the last item the defendant alleged that the plaintiff had received this sum of money from the Rivers Steam Navigation Company on account of his salary in addition to the sum of Rs. 204 which the plaintiff admitted had been paid to him on the same account by the defendant.

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Both the Extra Assistant Commissioner of Tejpur and the Judge of Assam on appeal decreed the plaintiff's claim in full, holding that inasmuch as the items claimed as set-off were not ascertained sums of money within the meaning of s. 111 of the Civil Procedure Code, they could not be set off against the plaintiff's claim. The defendant appealed to the High Court.

Baboo *Pran Nath Pundit* for the appellant.

Baboo *Jogendro Nath Ghose* for the respondent.

The judgment of the High Court (TOTTENHAM and BANERJEE, JJ.) was as follows:—

This appeal has been preferred by the defendant in a suit brought against him by the plaintiff to recover arrears of salary. The defendant disputed the amount due. In his written statement he has set out a number of items for which he claimed credit; and the total of which, if allowed, would reduce the plaintiff's claim by Rs. 624 odd.

Both the Courts below decreed the plaintiff's claim in full, holding that none of the items set out by the defendant in his defence came within the scope of s. 111 of the Code of Civil Procedure and could not be claimed as a set-off. Against this decision the present appeal has been brought. As regards most of the items set out by the defendant we concur with the lower Court in thinking that they do not come within the scope of s. 111, for most of them are not ascertained amounts due by the plaintiff. It is true that they are all specified amounts, but specified amounts are not necessarily ascertained debts. As regards, however, one of the items, it was not pleaded as a set-off, but it was alleged to be payment on account of salary for which the suit is brought. The plaintiff has given credit for Rs. 204, as having been paid from time to time. The defendant pleaded a further payment of Rs. 130. That payment he did not allege to have been made personally to the plaintiff, but he alleged that the plaintiff had received it from the Steamer Company whose servant the defendant was, and which was in a sense, therefore, employer of the plaintiff also, although it may be that the defendant had employed the plaintiff without any reference to the Steamer Company. Be that as it may, if the plaintiff actually received Rs. 130

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from the Steamer Company on account of monthly salary, that amount will have to be credited in the present suit. At all events the Court should have enquired into this item, and not treated it as a claim to set-off, under s. 111 of the Code. Then as regards the other items set out in the first Court's judgment as claimed by the defendant, although most of them may not, and do not, come within the scope of s. 111, still we think, independently of that section, that the defendant was entitled to bring them forward, and have an adjudication in respect of them in this suit. They were in the nature of cross-claims, and were so connected with the plaintiff's claim for salary as servant and agent of the defendant, that it would seem inequitable to compel the defendant to have recourse to a separate suit to recover them. This has been laid down in *Clark* v. *Ruthnavaloo Chetti* (1). It was there said "that the right of set-off will be found to exist not only in cases of mutual debts and credits, but also where the cross-demands arise out of one and the same transaction, or are so connected in their nature and circumstances as to make it inequitable that the plaintiff should recover and the defendant be driven to a cross-suit" That decision was followed not only in later cases in the Madras Court, but also followed in this Court, in a case of *Bhagbat Panda* v. *Bamdeb Panda* (2); and we think that the law there laid down is applicable to the present suit. The claims as made by the defendant arise for the most part out of the relation set up by the plaintiff in this suit, as a suit of master and servant, or principal and agent; and so far as these items are claimed in respect of the alleged neglect or misconduct of the plaintiff in his capacity of servant of the defendant, we think that the defendant was entitled to have the claims enquired into. Of course there may be, as regards each item, several reasons why the defendant may fail in recovering, still those are matters which will have to be enquired into.

We therefore direct that the case be sent down to the Court of first instance to be re-tried.

Costs will abide the result.

C. D. P. *Appeal allowed and Case remanded.*

(1) 2 Mad. H. C., 296. (2) I. L. R., 11 Calc., p. 557.